

SENATE BILL REPORT

ESHB 2638

As Reported by Senate Committee On:
Labor & Commerce, February 24, 2020
Ways & Means, March 2, 2020

Title: An act relating to authorizing sports wagering subject to the terms of tribal-state gaming compacts.

Brief Description: Authorizing sports wagering subject to the terms of tribal-state gaming compacts.

Sponsors: House Committee on Commerce & Gaming (originally sponsored by Representatives Peterson, MacEwen, Stonier, Harris, Robinson, Young, Ortiz-Self, Stokesbary, Tharinger, Walsh, Riccelli, Appleton, Griffey, Hansen, Kloba, Lekanoff, Sells, Chapman, Gregerson and Ramel).

Brief History: Passed House: 2/13/20, 83-14.

Committee Activity: Labor & Commerce: 2/24/20, 2/24/20 [DP-WM, DNP, w/oRec].
Ways & Means: 2/28/20, 3/02/20 [DPA, DNP, w/oRec].

Brief Summary of Amended Bill

- Allows the amendment of tribal-state gaming compacts, upon a tribe's request, to authorize sports wagering at the tribe's facility when conducted pursuant to negotiated tribal-state gaming compact provisions.
- Provides that gambling information related to authorized sports wagering may be transmitted over the Internet, but requires a wager to be placed and accepted only while the customer is physically at the tribal gaming facility.
- Defines the terms, including sports wagering, collegiate sport or athletic event, electronic or esports event, and professional sport or athletic event.
- Establishes new crimes and amends existing crimes in the Gambling Act.
- Amends the Commission's powers and duties.

SENATE COMMITTEE ON LABOR & COMMERCE

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass and be referred to Committee on Ways & Means.
Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Stanford and Wellman.

Minority Report: Do not pass.
Signed by Senators King, Ranking Member; Walsh.

Minority Report: That it be referred without recommendation.
Signed by Senators Braun and Schoesler.

Staff: Susan Jones (786-7404)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.
Signed by Senators Rolfes, Chair; Mullet, Capital Budget Cabinet; Billig, Carlyle, Conway, Darneille, Dhingra, Hasegawa, Hunt, Keiser, Liias, Muzzall, Pedersen, Van De Wege and Wagoner.

Minority Report: Do not pass.
Signed by Senators Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Rivers and Wilson, L..

Minority Report: That it be referred without recommendation.
Signed by Senators Braun, Ranking Member; Becker, Schoesler and Warnick.

Staff: Julie Murray (786-7711)

Background: Supreme Court Decision Regarding Sports Betting. In May 2018, in the case of *Murphy v. National Collegiate Athletic Association*, the United States Supreme Court ruled that the federal Professional and Amateur Sports Protection Act violates the Tenth Amendment to the United States Constitution by prohibiting states from authorizing sports betting. After this decision, some states passed legislation allowing sports betting or wagering.

Indian Gaming Regulatory Act. The federal Indian Gaming Regulatory Act (IGRA) affirmed tribal gaming rights and provides a framework for Indian tribes and states to negotiate, on a government-to-government basis, for how class III gaming will be conducted within a state and on tribal lands. Types of gaming are separated into three classes under IGRA. Class III gaming is casino-style gaming including lotteries, roulette, and house-banked card games such as blackjack and baccarat. Tribes and the state negotiate regarding Class III gaming and how it will be authorized and regulated. Class I and II gaming is regulated by tribes only. Class I gaming includes social games for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals in connection with tribal ceremonies or celebrations. Class II gaming includes bingo and certain non-house-banked card games.

Compact Negotiations. In Washington, the Gambling Commission (Commission) negotiates compacts for Class III gaming with federally recognized Indian tribes. There are 29 federally recognized Indian tribes in Washington, all of whom have a gaming compact with the state.

When a tentative agreement on a proposed compact is reached, the director of the Commission (Director) transmits a copy to all voting and ex officio members of the Commission and to the appropriate standing committees of the Legislature. Within 30 days after receiving a proposed compact from the Director, one standing committee from each house of the Legislature must hold a public hearing on the proposed compact and any comments are forwarded to the Commission. If the Director forwards a proposed compact within 10 days before the beginning of a regular session of the Legislature, or during a regular or special session, the 30-day time limit and the 45-day limit are each 45 days and 60 days, respectively.

The Commission may also hold public hearings on the proposed compact any time after receiving a copy of the compact from the Director. Within 45 days after receiving the proposed compact from the Director, the Commission, including the four ex officio members, votes on whether to return the proposed compact to the Director with instructions for further negotiation or to forward the proposed compact to the Governor for review and final execution.

Illegal Gambling Activities. Under Washington law, transmitting or receiving gambling information by means of the Internet is illegal and punishable as a class C felony. Additionally, operating an unauthorized bookmaking operation is punishable by up to a class B felony. "Bookmaking" is defined as accepting bets, upon the outcome of future contingent events, as a business or in which the bettor is charged a fee or vigorish for the opportunity to place a bet.

Sports Pool. Since 1976, a limited form of sports wagering called sports pools has been legal in Washington. To conduct sports pools no license is required. Sports pools are limited to a board or piece of paper divided into 100 equal squares, each of which constitutes a chance to win in the sports pool and each of which is offered to contestants for \$1 or less. The purchasers signs their name on the face of each chance or square purchased. After the subject athletic contest starts and the sports pool closes, a prospective score is assigned by random drawing to each square. All money paid by participants less taxes is paid out as the prize to the person holding squares assigned the winning score or scores from the subject athletic contest.

Summary of Amended Bill: Tribal-State Compacts Allowed to Authorize Sports Wagering. Upon the request of a federally recognized Indian tribe or tribes in the state of Washington, the tribe's class III gaming compact may be amended, pursuant to the IGRA and state law, to authorize the tribe to conduct and operate sports wagering on its Indian lands, provided the amendment addresses: licensing; fees; how sports wagering will be conducted, operated, and regulated; issues related to criminal enforcement, including money laundering, sport integrity, and information sharing; and responsible and problem gambling. Sports wagering conducted pursuant to the gaming compact is an authorized gambling activity and authorized bookmaking and is not subject to civil or criminal penalties.

Definitions. Sports wagering is defined as the business of accepting wagers on any of the following sporting events, athletic events, or competitions:

- a professional sport or athletic event, but not minor league sport;
- a collegiate sport or athletic event;

- an Olympic or international sports competition or event;
- an electronic sports or esports competition or event;
- a combination of the above sporting events, athletic events, or competitions; and
- a portion of any of the above sporting events, athletic events, or competitions.

The business of accepting wagers on horse racing is excluded from the definition of sports wagering. The terms collegiate sport or athletic event, electronic or esports event, professional sport or athletic event are defined.

Information Over Internet. Gambling information may be transmitted over the Internet for any sports wagering conducted and operated under the new authorization, provided that the wager may be placed and accepted at a tribe's gaming facility only while the customer placing the wager is physically present on the premises that tribe's gaming facility.

Prohibited Activities and Criminal Penalties. No person may:

- offer, promise, give, or attempt to give anything of value to: (1) influence the outcome of a sporting event, athletic event, or competition (sporting event) on which a wager may be made; or (2) obtain confidential or insider information with intent to use the information to gain a wagering advantage on a sporting event;
- place, increase, or decrease a wager after acquiring non-public knowledge that anyone has been offered, promised, or given any thing of value to influence the outcome of a sporting event on which the wager is placed, increased, or decreased;
- accept or agree to accept, any thing of value for the purpose of wrongfully influencing the person's play, action, decision making, or conduct in any sporting event, upon which a wager may be made.

No person or entity operating any gambling activity may, directly or indirectly:

- alter or misrepresent the outcome of a game or other event on which wagers have been made after the outcome is made sure but before it is revealed to the players;
- place, increase, or decrease a bet or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of the game or any event that affects the outcome of the game or which is the subject of the bet or to aid anyone in acquiring such knowledge for the purpose of placing, increasing, or decreasing a bet or determining the course of play contingent upon that event or outcome;
- knowingly entice or induce another person to go to any place where an illegal gambling activity is being conducted or operated with the intent that the other person play or participate in that activity; or
- place, increase, reduce, or cancel a bet after acquiring knowledge of the outcome of the game or event that is the subject of the bet.

Any person who violates these prohibitions is guilty of a class C felony. A person is guilty of professional gambling in the first degree, a class B felony, if the person engages in, or knowingly causes, aids, abets, or conspires with another to engage in professional gambling and engages in bookmaking.

Gambling Commission Authority Modified. The existing authority of the Commission to authorize and require licensure of persons, associations, or organizations who engage in the selling, distributing, or suppling of gambling devices for use in Washington is amended to

add "manufacturing" and "equipment, software, hardware, or any gambling related services" to the activities and things within the Commission's licensing authority. Employees participating in the operation, management, or gambling-related services for sports wagering must be listed on the license applications. The Commission may issue, for a period not to exceed one year, sports wagering-related services licenses for use within this state for authorized sports wagering activities.

The Commission may inspect and audit the databases, hardware, software, or any other electronic data storage device of any person, association, or organization conducting authorized gambling activities. The Commission may require the submission of reports on suspicious activities or irregular betting activities to effectively identify players, wagering information, and suspicious and illegal transactions, including the laundering of illicit funds.

The Commission may ensure sport integrity and prevent and detect competition manipulation through education and enforcement of the state criminal provisions. It may track and monitor gambling-related transactions to aid in its enforcement of criminal laws, including the use of funds derived from illegal activity, wagers to conceal or launder funds derived from illegal activity, use of agents to place wagers, or use of false identification by a player.

Report to the Legislature. No later than December 1st of the year following any authorization by the Legislature of a new gambling activity, any report by the Commission to the Governor and the appropriate committees of the Legislature must include information on the state of the gambling industry both within the state and nationwide.

EFFECT OF WAYS & MEANS COMMITTEE AMENDMENT(S): Allows the Gambling Commission to use the \$6 million appropriation to the Gambling Revolving Account for implementation of the Act, in addition to enforcement actions in the illicit market for sports wagering. Excludes minor league sports from the definition of professional sport or athletic events. Prohibits sports wagering on any minor league sport.

Appropriation: The bill contains an appropriation totaling \$6 million from the State General Fund for fiscal year ending June 30, 2020, for expenditure by the Gambling Commission solely for enforcement actions in the illicit market for sports wagering and for implementation of the act. The appropriation is a loan from the State General Fund to the Gambling Revolving Account that must be repaid with net interest by June 30, 2021.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony on Engrossed Substitute House Bill (Labor & Commerce): PRO: Washington tribes have three decades of handling gaming in a safe way. It would not expand the gambling footprint. Most people do not want gaming expanded beyond the current gaming. The bill is a conservative approach without a widespread expansion. Gambling was prohibited and then narrowly expanded. This bill continues this.

Tribal gaming is governmental gaming, like the state lottery, and provides fund for the tribes. It also provides job opportunities, charitable contributions, and support for problem gaming. This will make a difference in tribes' ability to help their communities. Tribes provide revenue to the economy. Tribes keep the money in Washington state. Maverick is a Nevada company. The tribes have good government to government relations. Under IGRA, this is what tribes need for compacting.

CON: We cannot fathom why there needs to be a monopoly or an emergency. Card rooms provides family wage jobs and provide revenue to the state economy. Tribes are not the only ones that can handle sports betting. Card rooms are also a trusted partner. Card rooms are licensed and regulated. Card rooms can handle this. This had no exclusivity, no taxes.

The emergency clause is there to stop the public from weighing in. There is no pressing fiscal emergency.

Legal sports betting should provide more opportunity for more people not fewer. We can all benefit from legal sports betting. For years, we have had no one to speak to. With a union, we have a good contract. The union represents us and now our voices are being heard. The card room industry has allowed workers to go back to school and are part of the community. With the union agreement with card rooms, the employees have real benefits.

We want an equal shot with the tribes. Card room customers will leave and this will take away those jobs. The customers will go where they have more options. We saw this when the tribal slot machines and smoking was still allowed in tribal casinos. Smoking ban sponsored by tribes put some casinos out of business.

The state lottery should be tasked with starting sports betting, like Oregon. There should be a tiered licensing for smaller card rooms and casinos. You should slow down and proceed with caution. What is the rush? Why pass something that gives Washington no direct benefit?

OTHER: Class III has no relevance off Indian country. You have a difficult decision on balancing these issue. The Gambling Commission spent time preparing for this possibility. The Commission is neutral on the bill. The Commission is supportive of the regulatory structure. Any pro sports would be allowed. Regulator may need to talk with leagues. 23 states have authorized sport betting. Seventy-five percent of all revenue is in three states; \$37 million of revenue is for the over the other states.

Persons Testifying (Labor & Commerce): PRO: Representative Strom Peterson, Prime Sponsor; Rebecca Kaldor, Washington Indian Gaming Association; David Bean, Chairman Puyallup Tribe of Indians; Kevin Zenishek, Executive Director of Casino Operations, Norther Quest Resort & Casino; Kara Fox-LaRose, President & GM, ilani Resort, Cowlitz Tribe; Chris Masse, Partner, Miller Nash Graham & Dunn.

CON: Mark Green, Lancer Lanes and Casino, Owner; Vicki Christophersen, Maverick Gaming; Craig Schweigert, Great American Casino; Tracy Berry, Great American Casino; Harold Walford, Crazy Moose, Coyote Bobs, and Caribbean Casinos; Gus Rotos, Roman and Macau Tukwilla; Heather Harris, Coyote Bobs, Crazy Moose, Carribbean; John Dennis, Silver Dollar Casino; Robert Scanlon, Silver Dollar Casino; Kristin Williams, Great

American Everett; Sam Mickleson, Club Hollywood; James Phan, Silver Dollar Casino; Dan Byrnes, Club Hollywood; Richard Rivera, Silver Dollar Casino; Nate Drake, Great American Casino.

OTHER: Irene Leary, citizen; Ciara Tofaeono, citizen; Michael Dalzen, citizen; Dave Trujillo, WSGC/Director; Brian Considine, WSGC/Legal & Legislative Manager; Esther Marshall, Silver Dollar Sea-Tac Dealer.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.

Staff Summary of Public Testimony on Engrossed Substitute House Bill (Ways & Means): *The committee recommended a different version of the bill than what was heard.*

PRO: This is important to all tribes in Washington State. The tribes are trusted partners. Tribes have three levels of oversight. This ensures sports wagering is safe and regulated. This does not expand the gambling footprint. Washington is conservative about gambling. Allowing tribes to conduct sports betting is a conservative expansion. Since the 2018 decision, illegal sports betting has emerged in Washington. This bill supports the tribes and will keep the revenue in Washington to support Washington. This is government gaming, which funds services in some of the poorest communities. Tribes help build healthy communities and help families. One person spoke about his experience as a dealer at a tribal casino and how the tribes helped with his sobriety. Tribes employ many people. They pay employee wages and benefits; fund charities, human services, and problem gaming prevention; and pay certain state and local taxes. This is positive tribe to state relations. Tribal gaming revenue will stay in the state. This is not true of commercial gaming. There is not a limit on the number of card rooms. Nothing in the bill takes away from card rooms. The reason for allowing social card games was as a stimulus for food and drink sales.

CON: Maverick has invested \$300,000 in Washington and employs approximately 2000 people. It has prevented closure of the card rooms and partnered with the teamsters. Maverick is a good partner with the state and Gambling Commission and is not sure why card rooms are excluded. The union contract with Maverick was ratified last night. The state allowed the table games to be shared. If card rooms were included all parties could have a win, win, win. This opportunity should be shared. Consider the impact to the card room employees and taxes. Card rooms have the highest tax. The taxes could help homelessness and education. Tribes do great things, but the notion that commercial gaming does not benefit communities is false. We proposed a 10 percent tax, which increase state revenues. People will not be in the card rooms if this passes and card room employees will be hurt. The slots and smoking ban hurt the card rooms. Ninety percent of the card room customers come from within three miles. Card rooms are small neighborhood businesses. People are downloading the Oregon app and driving to Oregon to play. There is not an emergency. Last year, there was no emergency. There was no emergency on the original bill. This is preventing a referendum. If constituents were to vote, this would not be allowed. You should allow card rooms or wait until next year.

OTHER: The Gambling Commission is neutral on the bill. The bill includes the five areas that the agency staff feels are important for a sports betting bill. The unexpected funding component is significant, showing criminal association with sports gambling will not be tolerated. The loan is a huge injection of funds needed. Fourteen states are operating with

seven additional states authorized. The bill allows betting professional and college games, except state collegiate games. Nevada allows any pro team. New Jersey prohibits wagering on in-state college teams. There are nearly 2000 employees at Maverick. There are policies not being considered. Card rooms are small and support communities. There are differing thoughts on whether this is a small or large expansion of gambling. Allowing card rooms is a fair compromise for working families at Maverick.

Persons Testifying (Ways & Means): PRO: Kara Fox-LaRose, GM Ilani Resort; Kevin Zenishek, Executive Director of Casino Operations, Northern Quest Resort & Casino; Chris Masse, Partner, Miller Nash Graham & Dunn; Rebecca Kaldor, Executive Director, WIGA; Lawrence Solomon, Chairman, Lummi Nation; Harrison Hunt, Supervisor, Yakama Legends Casino.

CON: Vicki Christophersen, Maverick Gaming; Eric Persson, Maverick Gaming/Owner; Wes Tompkins, Coyote Bob's Casino/Dealer; Harold Walford, Maverick Gaming/Eastern Washington Regional Manager; Craig Schweigert, Great American Casino Lakewood and Macau/Regional General Manager; Gus Rontos, Roman Casino and Macau Tukwila/Regional General Manager; Dan Byrnes, Great American Casino Everett/Table Games Dealer.

OTHER: Dave Trujillo, WSGC/Director; Brian Considine, WSGC/Legal & Legislative Manager; Brenda Wiest, Teamsters 117.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.